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BEFORE THE ARIZONA CORPORATION COMMISSION

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2004 MAY 12 P 2: 53

MAY 12 2004

AZ CORP COMMISSION  
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IN THE MATTER OF QWEST CORPORATION'S  
FILING OF RENEWED PRICE REGULATION  
PLAN.

DOCKET NO. T-01051B-03-0454

IN THE MATTER OF THE INVESTIGATION OF  
THE COST OF TELECOMMUNICATIONS  
ACCESS.

DOCKET NO. T-00000D-00-0672

PROCEDURAL ORDER

**BY THE COMMISSION:**

On July 1, 2003, Qwest Corporation ("Qwest") filed the Qwest Renewed Price Regulation Plan in accordance with the provisions of the Second Revised Settlement Agreement approved in Decision No. 63487 on March 30, 2001.

By Procedural Order dated November 17, 2003, the Commission determined that Phase I of the Access Charge Docket, which addresses Qwest's access charges, should be considered in conjunction with the Price Cap Plan Docket.

On February 27, 2004, AT&T of the Mountain States, Inc. ("AT&T") filed a Motion for Joinder of Persons Needed for Just Adjudication. AT&T seeks to join Qwest Communications Corporation ("QCC") and Qwest LD Corporation ("QLDC"), affiliates of Qwest, as parties to Qwest's Price Cap Plan/Access Charge proceeding.

On March 11, 2004, Qwest filed a Response to AT&T's Motion for Joinder. Qwest opposes joinder.

On March 18, 2004, AT&T filed a Reply to Qwest's Response.

Pursuant to Procedural Orders dated March 25, 2004, and April 6, 2004, the Commission heard oral argument on the Motion for Joinder on April 14, 2004.

As way of background, AT&T states that in the access cost docket, AT&T submitted a

1 number of data requests to Qwest, to which Qwest responded that the information sought was in the  
2 possession of its affiliates QCC and QLDC. AT&T believes Qwest is seeking to limit the scope of  
3 the access case to the rates its charges for switched access, but that the scope should also include  
4 determining Qwest's costs of providing interexchange service so that a price floor can be established.  
5 AT&T argues that the Commission must review the cost of all Qwest's services in conjunction with  
6 any access rate reductions to determine what, if any, rates must be adjusted, and that based on  
7 statements by Qwest, QCC and QLDC have information in their possession that is necessary to  
8 determine the cost of interexchange service and the price floor of the rates Qwest charges for  
9 interexchange service. AT&T asserts that Rule 19(a) permits the joinder of QCC and QLDC:

10 Rule 19(a) states:

11 A person who is subject to service of process and whose joinder will not  
12 deprive the court of jurisdiction over the subject matter of the action shall  
13 be joined as a party in the action if 1) in the person's absence complete  
relief cannot be accorded among those already parties, . . . if the person  
has not been so joined, the court shall order that the person be made a  
party.

14 AT&T believes that in the absence of QCC and QLDC, complete relief cannot be afforded to AT&T  
15 and the other IXC's.

16 Furthermore, the Price Cap Plan currently before the Commission is the first opportunity the  
17 Commission has to review Qwest's revenues and devise a price plan subsequent to Qwest having  
18 received authority to provide in-region long-distance service. AT&T raises the concern that QCC  
19 and QLDC appear to be offering services that were once performed by Qwest, and hence, revenues  
20 that once would have accrued to Qwest, may be shifted to its affiliates. Services that appear to be  
21 provided by different affiliates, are being marketed as a bundle. AT&T suggests that it is appropriate  
22 for the Commission to review the costs and revenues of the affiliated long distance carriers to obtain  
23 a full and complete picture of Qwest's revenue requirements.

24 In addition, AT&T notes that in March 2004, the Federal Communications Commission  
25 ("FCC") eliminated certain of its "operate independently" rules, with the effect that Qwest and its  
26 Section 272 affiliates may now "use a single set of employees to perform operating, installation and  
27 maintenance ("OI&M") service for both their local and long distance networks. AT&T argues that as  
28 much as Qwest would like to maintain the legal notion that Qwest and its Section 272 affiliates are

1 separate corporations, in reality they are "joined at the hip."

2 AT&T asserts that the Commission has authority to control its dockets and proceedings.  
3 Because QCC and QLDC are subject to Commission regulation, the Commission can order that they  
4 be made parties to this proceeding to further the goals of the Commission.

5 Qwest argues that it is not necessary to join either QCC or QLD to achieve a just adjudication  
6 in this case. According to Qwest, under Arizona law, the test for joining a necessary or indispensable  
7 party is whether the absent party's interest in the controversy is such that no final judgment or decree  
8 could be entered, doing justice between the parties actually before the tribunal and without  
9 injuriously affecting the rights of others not brought in the action. Qwest asserts that the purpose of  
10 this docket is to set just and reasonable rates for Qwest. The intrastate access rates that AT&T is  
11 interested in are Qwest's and not QCC's or QLDC's rates. Thus, Qwest argues, complete relief can  
12 be accorded among those already parties without adding QCC or QLDC as parties.

13 Qwest states that the intrastate access rates presently charged by Qwest and information  
14 relating to how Qwest implements those rates may be obtained from Qwest, and will be provided as  
15 part of its A.A.C. R14-2-103 filing. It asserts that if AT&T wants to challenge the rates charged by  
16 QCC and QLDC, it should file a complaint against those entities. Qwest argues that AT&T seeks  
17 joinder of QCC and QLDC so it can more easily conduct discovery, which is not sufficient reason to  
18 invoke the joinder rules.

19 MCI, the Department of Defense and the Commission's Utilities Division Staff ("Staff")  
20 support AT&T's position. Staff believes that to the extent that information from QCC and/or QLDC  
21 is necessary to resolve some of the issues in this case, those two entities should be joined as parties.  
22 Staff believes that not having these entities as parties would create procedural impediments and make  
23 discovery more difficult, and hence resolution of the issues more difficult. Furthermore, Staff agrees  
24 that complete resolution of issues concerning imputation and alleged price squeezes of intrastate long  
25 distance rates may require joining QCC and QLDC.

26 Commission Rule R14-3-101(A) provides that where the Commission's rules do not address a  
27 procedural issue, the Rules of Civil Procedure of the Superior Court apply. Rule R14-3-101(B)  
28 provides that the Commission's rules shall be liberally construed to secure just and speedy

determinations of all matters presented, and when good cause appears, the Commission or the presiding officer may waive application of the rules when not in conflict with the law and where it does not affect the substantive interests of the parties.

In this case, the interest of justice supports joining QCC and QLDC in this consolidated proceeding. Not only do these Qwest affiliates appear to have information in their possession relevant to the issues raised in these dockets which will be more easily obtained if they are made parties, but issues concerning imputation of revenue and Qwest's full costs of providing interexchange access appear to require their joinder in order for the Commission to grant full and complete relief in these dockets. The efficiency and efficacy of the Commission's review of the Price Cap Plan will be enhanced by their joinder. The Commission has authority to regulate QCC's and QLDC's provision of intrastate long distance service in Arizona. The substantive rights of QCC and QCLD will not be impaired as they will have full notice and an opportunity to be heard on any and all issues affecting them.

IT IS THEREFORE ORDERED that AT&T's Motion for Joinder is granted and QCC and QLDC shall be made parties to the above-captioned consolidated dockets.

IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

DATED this 12 day of May, 2004.

  
JANE L. RODDA  
ADMINISTRATIVE LAW JUDGE

Copy of the foregoing mailed/delivered this 12 day of May, 2004, to:

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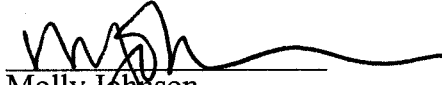
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